

BROADWATER COUNTY SUBDIVISION REGULATIONS

As Adopted by:

**Board of Broadwater County Commissioners on November 29, 2021 and
Amended on January 18, 2023; Amended on _____, 2024**

**Prepared to comply with the
Montana Subdivision and Platting Act as set forth in Title 76, Chapter 3,
Montana Code Annotated (MCA) (2023)**

The Broadwater County Subdivision Regulations Resolution of Adoption is kept on file at the Office of Broadwater County Commissioner and the Office of Broadwater County Planner.

The Broadwater County Subdivision Regulations are hereinafter referred to as the/these Regulations.

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DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

1. ACCESS (LEGAL AND PHYSICAL):

a. Legal access exists when the subdivision abuts a public street or road under the jurisdiction of the City, the County, or the State; or when the subdivider has obtained documented, adequate, and appropriate written easements across all intervening properties from a public road to each lot in the subdivision.

b. Physical access means that a street or road conforming to the subdivision design standards provides vehicular access to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use or for the use of the subdivision.

2. ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER): The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse, or deeded right-of-way.

3. ADMINISTRATIVE MINOR SUBDIVISION: A subdivision meeting the requirements of subsection 76-3-609(6), MCA.

4. AGRICULTURE: All aspects of farming or ranching, including the cultivation or tilling of the soil; dairying; the production, cultivation growing, and harvesting of agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act and the raising of livestock, bees, fur-bearing animals, poultry, biological control insects, fruits and vegetables, sod, ornamental, nursery, and horticultural crops; and any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation market, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils.

5. AGRICULTURAL COVENANT: A covenant running with the land, approved by the governing body, which restricts the land to agricultural uses only, see Section 76-3-207(1)(c), MCA; and prohibits construction of residential, commercial, or industrial buildings, which require water or sewer; and can only be removed pursuant to Section 76-3-211, MCA.

6. AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands to produce agricultural products

including any part of an irrigation system historically used to produce an agricultural product on property used for agricultural purposes. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

7. **ARM:** Administrative Rules of Montana.
8. **ALLEY:** A public or private road used for secondary vehicular access to the rear of properties but are not to serve as primary access or carry daily traffic.
9. **BASE FLOOD ELEVATION:** The computed elevation to which floodwater is anticipated to rise during a flood having a one percent chance of being equaled or exceeded in any given year. A base flood is the same as a flood of 100-year frequency. 36.15.101(4) ARM.
10. **BLOCK:** A group of lots, tracts, or parcels within well-defined and fixed boundaries. Such boundaries may include streets, railroads, irrigation ditches, streams, platted lands, or a combination thereof.
11. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations. Section 76-3-103 (1), MCA.
12. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. Section 76-3-103 (2), MCA.
13. **COMMERCIAL USE:** The purchase, sale, or transaction involving the disposition or storage of any article, substance, commodity, or service, maintenance or conduct of offices, professionals, or recreational or amusement enterprises conducted for profit and including renting of rooms, business offices, and sale display rooms, and premises, which includes mobile home and recreational vehicle parks.
14. **COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999. When a growth policy has been approved, subdivision regulations must be made in accordance with the growth policy. Section 76-1-606, MCA.
15. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
16. **COUNTY ROAD IN SUBDIVISION:** A road on a final subdivision plat that is dedicated to public use is not considered a county road until the board of county commissioners approves by resolution the adoption of the road as a county road. Section 7-14-2101(2)(d), MCA.

17. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.
18. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. Section 76-3-103 (3), MCA.
19. **DEQ:** The Montana Department of Environmental Quality.
20. **DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. Section 76-3-103 (4), MCA.
21. **DRIVEWAY:** A driveway is a vehicular access serving no more than one dwelling unit. Vehicular accesses serving or abutting more than one dwelling unit shall be considered a road, and shall be built to the road standards outlined in these Regulations.
22. **DWELLING UNIT:** Any structure or portion thereof providing complete, independent, and permanent living facilities for one household. Section 76-3-621(10)(b), MCA.
23. **EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
24. **ENGINEER (PROFESSIONAL ENGINEER):** A person licensed and registered in conformance with the Montana Engineers' and Land Surveyors' Act [Title 37, Chapter 67, MCA] to practice engineering in the State of Montana.
25. **ENVIRONMENTAL ASSESSMENT:** A component of a subdivision application for major subdivisions that provides information needed for the assessment of impacts from subdivision on agriculture, agricultural water users' facilities, local services, national environment, wildlife, wildlife habitat, and public health and safety. The contents of an environmental assessment shall be pursuant to Section 76-3-603, MCA.
26. **EXAMINING LAND SURVEYOR:** A registered land surveyor appointed by the governing body to review surveys and plats submitted for filing. Section 76-3-103(5), MCA. The examining land surveyor may also conduct investigations of requests concerning roads.
27. **FINAL PLAT:** The final drawing of the subdivision and dedicate required by the MSPA to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in the MSPA and these Regulations. Section 76-3-103(6), MCA.
28. **FIRST MINOR SUBDIVISION:** A proposed subdivision of a tract of record that:

- a. has not been subdivided or created by a subdivision,
 - b. or has not resulted from a tract of record that has had more than five parcels created from that tract of record under Section 76-3-201 or 76-3-207, MCA since October 1, 2003. Section 76-3-609(2), MCA.
- 29. FLOOD:** The water of any watercourse or drainway that is above the bank or outside the channel and banks of such watercourse or drainway. Section 76-5-103 (8), MCA.
- 30. FLOOD HAZARD AREA:** The area at and below the base flood elevation.
- 31. FLOOD OF 100 YEAR FREQUENCY:** A flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year. Section 76-5-103 (9), MCA.
- 32. FLOODPLAIN:** The area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency. Section 76-5-103 (10), MCA.
- 33. FLOODWAY:** The channel of a watercourse or drainway and those portions of the floodplain adjoining the channels that are reasonably required to carry and discharge the floodwater of any watercourse or drainway. Section 76-5-103 (11), MCA.
- 34. GOVERNING BODY:** The governing authority of Broadwater County organized pursuant to law. Section 76-3-103 (7), MCA.
- 35. HOUSING DEDICATION:** A dedication of real property as prohibited in 7-2-4203, 76-2-203, and 76-2-302, MCA, which includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.
- 36. IMPROVEMENT AGREEMENT:** A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations, including, but not limited to driveway or roadway improvement agreements. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance, or property bonds, private or public escrow agreements, or similar financial guarantees. Section 76-3-507, MCA.
- 37. INDUSTRIAL USE:** The manufacture, fabrication, processing or reduction of any article, substance, or commodity or any other treatment thereof in such a manner to change the form character or appearance thereof. It shall include trucking facilities, rail facilities, mining, warehousing, and product, materials or equipment storage, and businesses serving primarily industry and similar enterprises.
- 38. LANDOWNER:** All individuals, groups, or parties with a title interest in the property. For purposes of Section 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms

“property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms “property owner,” “landowner,” and “owner” mean both the seller and the purchaser under a contract for deed.

39. LOCAL FIRE AUTHORITY: A local fire district, fire service area, or the county fire marshal. See Title 7, Chapter 33, MCA.

40. LOCAL SERVICES: All services or facilities local government is authorized to provide that benefit their citizens, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation system, educational system, noxious weed control, as well as services that local government does not provide such as power, telephone, state highways, etc.

41. LOT: A parcel, plot, or other land area created by subdivision.

42. LOT MEASUREMENT:

- a. **Lot Depth.** The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. **Lot Width.** The average width of the lot.
- c. **Lot Frontage.** The width of the front lot line.
- d. **Net Lot Area.** The gross lot area less the area within any existing or proposed public or private street, road or easement for ingress and egress, and less the area within any existing or proposed easement wherein the owner of the lot is prohibited from using the surface of the land. Included in the net area is the area lying within public utility easements, sanitary sewer easements, landscaping easements, and other such easements wherein the owner of the lot is not prohibited from using the surface of the land.
- e. **Gross Lot Area.** The total area, measured in a horizontal plane, within the boundary lines of a lot.

43. LOT TYPES:

- a. **Corner Lot.** A lot located at the intersection of two streets or roads.
- b. **Interior Lot.** A lot with frontage on only one street or road.
- c. **Through or Double-Frontage Lot.** A lot whose front and rear lines both abut on streets.
- d. **Flag Lot.** A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

44. MAJOR SUBDIVISION: A subdivision that creates six or more lots.

45. MCA: Montana Code Annotated.

- 46. MINOR SUBDIVISION:** A subdivision that creates five or fewer lots from a tract of record. Section 76-3-103(9), MCA.
- 47. MOBILE (MANUFACTURED) HOME:** A detached residential dwelling unit, which may consist of two or more sections, designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation, which in the traveling mode is eight body feet or more in width or forty body feet or more in length, or, when erected on-site is 320 or more square feet in size. Mobile homes are designed to be used as a dwelling for human occupancy upon connection to required utilities, including plumbing, heating, and electrical systems. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes and are transported to the site for final assembly on a permanent foundation. 42 U.S.C. 3535(d), 5403, 5404, and 5424.
- 48. MOBILE (MANUFACTURED) HOME SPACE:** A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
- 49. MOBILE (MANUFACTURED) HOME PARK:** A tract of land that provides or will provide two or more spaces for rent or lease in which a mobile home will be placed. Section 76-3-103(16), MCA.
- 50. MOBILE (MANUFACTURED) HOME PAD:** That area of a mobile home space which has been prepared for the placement of a mobile home.
- 51. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
- 52. MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
- 53. MSPA:** Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.
- 54. NATURAL ENVIRONMENT:** The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light, and objects of historic and aesthetic significance.
- 55. NO BUILD ZONE:** An area in which no building or structure may be constructed or otherwise placed. If the No Build Zone contains a waterway, floodway or natural waterway drainage, then no dirt can be moved in to fill up the waterway or floodway. A No Build Zone is generally intended to mitigate potentially adverse impacts.

- 56. OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
- 57. ORDINARY HIGH-WATER MARK:** The line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. 36.2.402(6) A.R.M.
- 58. PHASED DEVELOPMENT:** A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider. Section 76-3-103(10), MCA.
- 59. PHASING PLAN:** The plan and proposed schedule of a subdivision design proposed to be subdivided in stages.
- 60. PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use. Section 76-3-103 (10), MCA.
- 61. PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.
- 62. PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications. Section 76-3-103 (12), MCA.
- a. **Preliminary Plat.** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA. Section 76-3-103(13).
 - b. **Final Plat.** The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. Section 76-3-103(6), MCA.
 - c. **Amended Plat.** The final drawing of any change to a filed platted subdivision, or any lots, within a filed platted subdivision.
 - d. **Vacated Plat.** A plat which has been voided under the provisions of MCA Sections 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.
- 63. PRE-APPLICATION SKETCH (OR DRAWING):** A legible drawing showing approximate boundaries, dimensions, areas, distances, and other pertinent information of a proposed subdivision, all as more particularly set forth in Subsection II-A-4 (b) of these regulations. Section 76-3-504(q), MCA.

- 64. PRIVATE IMPROVEMENT:** Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
- 65. PRIVATE ROAD:** A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the public or public access may be restricted.
- 66. PUBLIC HEALTH AND SAFETY:** The prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
- 67. PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public, for the use of the subdivision, or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
- 68. PUBLIC ROAD OR STREET:** A road or street is public if its right-of-way has been dedicated or acquired for public use.
- 69. RECREATIONAL CAMPING VEHICLE:** A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper. Recreational Camping Vehicles are designed to be used as a temporary living quarter for human occupancy without connection to required utilities, including plumbing, heating, and electrical systems. Section 50-60-101(16), MCA.
- 70. RECREATIONAL VEHICLE PAD:** A designated location in a Recreational Vehicle Space that identifies where recreational vehicles must park during occupation, and where all other uses unless specifically authorized are prohibited.
- 71. RECREATIONAL VEHICLE PARK:** A tract of land where two or more spaces for rent or lease in which a recreational vehicle will be placed, that is available to and principally used by the public for camping. Section 76-3-103(16), MCA
- 72. RECREATIONAL VEHICLE SPACE:** A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle, the exclusive use of its occupants and their personal belongings including automobiles, outdoor storage etc.
- 73. RESIDENTIAL USE:** A dwelling unit designed for permanent occupancy by a single-family, two-family, or multifamily containing facilities for cooking, living, and sleeping.

These units include boarding or rooming houses. Residential use does not include transient accommodations, such as: hotels, motels, dormitories, fraternity or sorority houses, or tourist cabins.

74. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

75. RIGHTS-OF-WAY: A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

76. STATE: The State of Montana.

77. STREET TYPES: For purposes of these regulations, street types are defined as follows:

- a. **Alley.** A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
- b. **Arterial.** Arterial roads are designed to move vehicles through an area. The roads have limited access, higher speeds and may have traffic signals near populated areas. Arterials should ideally have a wider shoulder than other roads. Wider shoulders allow more room for people to pull over if they have vehicle trouble, plus they provide additional room for wide loads or recovery associated with loss of vehicle control. A six-foot shoulder is consistent with Montana Department of Transportation (MDT) standards for rural roads with more than 550 vehicles per day. The MDT standard for a bike lane varies from four to five feet and the six-foot shoulder allows for cyclists to use the shoulder. Secondary arterials typically have lower volumes and narrower shoulders than primary arterials. The only roads designated as arterial roads within Broadwater County are the Primary State Highways.
- c. **Major Collector.** Major collectors are designed to serve both traffic movement and access. The roads typically are paved and have crossroad access, but limited private driveway access and medium to high speeds. Within incorporated areas, no distinction is made between major and minor collectors. In unincorporated areas, the distinction is made mostly from the standpoint of placing greater priority on those designated as major collectors. State Secondary Highways in Broadwater County are designated as major collectors.
- d. **Minor Collector.** Minor collectors are similar to major collectors except they may carry a greater level of localized traffic, and their condition may not be as high a priority as major collectors. The roads typically have limitations to road or driveway access and medium speeds similar to those on major collectors.
- e. **Local Streets.** A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two

moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.

- f. **Driveway**. A private vehicular access serving no more than one dwelling unit.
- g. **Emergency Access**. Vehicular access designed and intended to provide a second access for emergency service providers.
- h. **Half-Street**. A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- i. **Cul-de-sac**. A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- j. **Loop**. A local street which begins and ends on the same street, generally used for access to properties.
- k. **Frontage Access (Service Road)**. A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

78. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land. Section 76-3-103 (15), MCA. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

79. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes. Section 76-3-103 (16), MCA.

80. SUBDIVISION ADMINISTRATOR: The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

81. SUBSEQUENT MINOR SUBDIVISION: A proposed subdivision which is the second, or subsequent, minor subdivision that does not result in a total of more than five parcels created by subdivision, or any combination of exemptions, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since October 1, 2003. Section 76-3-609(2), MCA.

- 82. SURVEYOR (PROFESSIONAL LAND SURVEYOR):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
- 83. SURVEYOR:** see EXAMINING LAND SURVEYOR.
- 84. SWALE:** A drainage channel or depression designed to direct surface water flow.
- 85. SUBDIVISION GUARANTEE:** A report from an authorized title insurer or title insurance producer on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter. Section 76-3-612, MCA.
- 86. TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
- 87. TOWNHOME or TOWNHOUSE:** Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities. Section 70-23-102(18), MCA.
- 88. TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office. Section 76-3-103 (17)(a), MCA.
- 89. U.S.C:** United States Code.
- 90. VICINITY SKETCH:** A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
- 91. WATER AND SANITATION INFORMATION:** The information required under 76-3-622, MCA, and to be submitted with the subdivision application. Section 76-3-601(1), MCA.
- 92. WATERCOURSE:** Any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks. Section 76-4-103(16), MCA.
- 93. WILDLIFE:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.
- 94. WILDLIFE HABITAT:** The place or area where wildlife naturally lives or travels through.

1. GENERAL PROVISIONS

1(a). TITLE

These regulations will be known and may be cited as “The Broadwater County Subdivision Regulations”; hereinafter referred to as “these regulations.”

1(b). AUTHORITY

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (“MSPA”) [Title 76, Chapter 3, MCA].

1(c). PURPOSE

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey, and provide for phased development. [Section 76-3-102, MCA].

These regulations are intended to comply with MCA, Title 76, Part 5 of the MSPA, and are intended to promote:

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The improvement of roads.
5. The provision of proper physical and legal access, including obtaining necessary easements.
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.
8. The avoidance or minimizing of congestion.

9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements.
11. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.
12. The manner and form of making and filing of any plat for subdivided lands.
13. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

1(d). JURISDICTION

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Broadwater County.

If a proposed subdivision lies within one mile of a third-class city or town or within two miles of a second-class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing body.

If a proposed subdivision is in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

1(e). SEVERABILITY

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

1(f). PUBLIC HEARING AND NOTICE

1(f)(i). Hearing

- A. Public hearings for major subdivisions shall be held by the planning board.
- B. When a hearing is required by these regulations, notice shall be posted according to the requirements in Subsection 1(f)(ii) below.

1(f)(ii). Notice

- A. The planning board shall give notice of the time, dates, and location of the hearing by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing.
- B. At least fifteen (15) days prior to the date of the hearing, the planning board shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

1(g). CONSTRUCTION TIMING

A person shall submit a Notice of Intent to Build and a Request for a Preapplication Meeting at least ninety (90) days prior to the anticipated beginning of construction. A person may not erect any facility for supply of water, disposal of sewage or solid waste, erect any building or shelter that requires facilities for the supply of water, disposal of sewage, or solid waste until the governing body has given conditional approval of the preliminary plat, and all proper permits have been obtained. In addition, a person shall not begin construction on facilities to be used by the public such as roads, parks or utilities until the governing body has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility that the work will have to be redone or removed.

1(h). TRANSFER OF TITLE

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter contracts to sell lots in the proposed subdivision if all the following conditions are met, see Section 76-3-303, MCA:

- 1. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- 2. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow

agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

3. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
4. That the contracts contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;” and
5. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.

1(i). PERMISSION TO ENTER

The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting being held by the planning board or governing body for a site visit.

1(j). VARIANCES

1(j)(i). Variances Authorized

The governing body may grant variances from Section 5, Design and Improvement Standards, of these regulations when due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

A public hearing is required to be held for variance request for all major subdivisions. The public hearing shall be held by the planning board pursuant to Subsection 1(f)(i). Notice of the hearing on the variance request must be posted according to Subsection 1(f)(ii). Public hearings are not required for variance requests for first minor subdivisions.

1(j)(ii). Variances from Floodway Provisions Not Authorized

The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

1(j)(iii). Variance Criteria

The governing body will not approve a variance unless it finds that:

- A. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- B. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
- C. The variance will not cause a substantial increase in public costs; and
- D. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

1(j)(iv). Variance Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. If during the review period a need for a variance is identified, and the variance has not been specifically requested, the application can be deemed insufficient, and the review period can be suspended until the issue is determined to be sufficiently addressed. For applications being considered by the planning board, the planning board will consider the requested variance and recommend its approval or denial to the governing body.

1(j)(v). Variance Conditions

In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

1(j)(vi). Variance Statement of Facts

When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

1(k). AMENDMENT OF REGULATIONS

Before the governing body amends these regulations, it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

1(l). ADMINISTRATION

1(l)(i). Enforcement

Except as provided in Section 76-3-303, MCA, and these regulations, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can

be sold or transferred in any manner. If unlawful transfers or uses are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

1(l)(ii). Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

1(l)(iii). Schedule of Fees

The required fee shall accompany the preliminary plat and final plat application. The review fee shall be paid to the planning department for each application reviewed according to the fee schedule as approved and established by the governing body under a separate document. No action shall be taken on applications or appeals until all application fees have been paid in full.

The governing body may require the subdivider to pay for third-party review fees, such as: Examining Land Surveying, Engineering, Montana Department of Environmental Quality, and other planning consulting review fees.

The required application review fee and third-party review fees will not be refunded.

1(l)(iv). Appeals

- A. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- B. A party identified in Subsection (D) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.
- C. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

- D. The following parties may appeal under the provisions of these regulations above in Subsection (B):
- I. the subdivider;
 - II. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - III. the county commissioners of the county where the subdivision is proposed; and
 - IV. one of the following municipalities:
 1. a first-class municipality as described in Section 7-1-4111, MCA, if a subdivision is proposed within 3 miles of its limits;
 2. a second-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 2 miles of its limits;
 3. a third-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 1 mile of its limits.

2. GENERAL PROCEDURES

**The provisions of this section apply to Section 3, 4, 5, 6, 7, and 8 of these regulations.*

2(a). PRELIMINARY PLATS

2(a)(i). Pre-application Process

- A. Prior to submittal of a subdivision application, the subdivider shall request a pre application meeting with the subdivision administrator. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator. Section 76-3-504(1)(q)(i) and (iv), MCA.
- B. At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. It is recommended the representative and the developer or landowner attend the pre-application meeting to avoid potential problems.
 - I. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
 - 1. Information on the status of the site, including:
 - a. location;
 - b. approximate tract and lot boundaries of existing tracts of record;
 - c. description of general terrain;
 - d. natural features on the land, including water bodies, floodplains geologic hazards, and soil types;
 - e. existing structures and improvements;
 - f. existing utility lines and facilities serving the area to be subdivided; and
 - g. existing easements and rights of way.
 - 2. Documentation on the status of the site, including:
 - a. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;

- b. water rights, including location of Agricultural Water User Facilities;
- c. any special improvement districts; and
- d. rights of first refusal for the property

II. Information on the proposed subdivision, including:

- 1. tract and proposed lot boundaries;
- 2. proposed public and private improvements;
- 3. location of utility lines and facilities;
- 4. easements and rights of way;
- 5. parks and open space and proposed conservation easements;
- 6. existing zoning or development regulation standards;
- 7. existing conservation easements; and
- 8. existing covenants or deed restrictions.

C. At the pre-application meeting:

- I. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations, and growth policy provisions that may apply to the subdivision review process including but not limited to zoning regulations and floodplain regulations (See Section 76-3-504(1)(q)(ii), MCA);
- II. the subdivision administrator shall provide information on phasing, if applicable;
- III. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state, and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond (See Section 76-3-504(1)(q)(iii), MCA); and
- IV. the subdivision administrator may identify additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information later.

- D. Unless the subdivider submits a subdivision application within six (6) months of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application. Section 76-3-504(1)(q)(v), MCA.

2(a)(ii). Subdivision Application and Preliminary Plat Submittal

The subdivider shall provide the required copies of the preliminary plat and supplement materials as determined by the subdivision administrator. All preliminary plats shall be 24 inch by 36-inch size, 18 inch by 24 inch in size and/or 11 inch by 17 inch size as specified by the subdivision administrator. The required copies of the all supplemental materials shall be organized with a cover sheet, table of contents identifying all the elements, identification tabs for each element listed below and shall be bound in a three-ring binder for each set and ready for distribution. The subdivider shall also provide the subdivision administrator with an electronic form (PDF format).

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as determined by the subdivision administrator:

1. A completed and signed Subdivision Application Form, Section 76-3-601(1), MCA;
2. The required review fee, Section 76-3-602, MCA;
3. A preliminary plat (and if applicable a preliminary site plan), Section 76-3-601(1), MCA;
4. A copy of the most current certificate of survey or subdivision plat pertaining to the subject parcel to be subdivided, Section 76-3-103(9), MCA;
5. A map showing the location of the nearest utilities, Section 76-3-504(1)(g)(iv), MCA;
6. A topographic map, Section 76-3-504(1)(e), MCA;
7. A stormwater drainage plan, Section 76-3-504(1)(g)(ii), MCA;
8. If development is planned in phases, a phasing plan meeting the requirements of Section 4(a)(ii), Section 76-3-617, MCA;
9. Title Report dated no more than six (6) months prior to the date of preliminary plat submittal, Section 76-3-102(8), MCA;
10. Lienholder's acknowledgement of subdivision;
11. Documentation of legal and physical access, Section 76-3-608(3)(d), MCA;
12. Documentation of existing easements, including those for Agricultural Water User Facilities and access, Section 76-3-504(1)(k) and (l), MCA;
13. Existing covenants and deed restrictions, Section 76-3-102(8), MCA;
14. Proposed covenants for the subdivision, Section 76-3-102(8), MCA;
15. Existing water rights, Section 76-3-504(1)(j), MCA;
16. Existing mineral rights, Section 76-3-102(8), MCA;
17. Names and addresses of all adjoining property owners, Section 76-3-605(3), MCA;
18. Proposed road plans and profiles, include the location and dimensions of the roads and if proposed alleys, sidewalks and / or paths, Section 76-3-504(1)(g)(i), MCA;

19. Approach/access/encroachment permits submitted to the Montana Department of Transportation or the local jurisdiction, Section 76-3-501(1)(d), (f) and (h), MCA;
20. Proposed road maintenance agreement;
21. Proposed easements, including the location of nearest utilities, Section 76-3-504(1)(g)(iv) and (m), MCA;
22. Proposed disposition of water rights, Section 76-3-504(1)(j), MCA;
23. Proposed disposition of mineral rights, Section 76-3-102(8), MCA;
24. Parkland dedication calculations, location of and description of proposed parkland, or proposal for cash-in-lieu, Section 76-3-621, MCA;
25. Environmental assessment for major subdivisions and subsequent minor subdivisions, Section 76-3-603, MCA;
26. Summary of probable impacts for minor and major subdivisions, Section 76-3-603(1)(a)(ii) and (b), MCA;
27. Transportation impact analysis or traffic study (if identified during the preapplication meeting), Section 76-3-501(1)(d), (f) and (h), MCA;
28. Noxious Weed Management Compliance Plan, Section 7-22-2152, MCA;
29. Existing and proposed property owners' association documents, including draft articles of incorporation, declaration and bylaws;
30. FIRM or FEMA panel map and letter identifying floodplain status;
31. Required water and sanitation information, Section 76-3-622, MCA;
32. Letter requesting a revocation of agricultural covenants, if applicable, Sections 76-3-207(1)(c) and 76-3-211, MCA;
33. Letter indicating locations of cultural or historic resources, Section 76-3-621(7), MCA;
34. Variance request, Section 76-3-506, MCA;
35. Re-zoning (or Conditional Use Permit) application or approval;
36. An engineering study that identifies the Base Flood Elevation (BFE) (if identified during the preapplication meeting), Section 76-3-504(1)(f), MCA;
37. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials, Section 76-3-504(1)(e), MCA;
38. Such additional relevant and reasonable information as identified by the subdivision administrator that is pertinent to the required elements of this section; and
39. If proposing a first minor subdivision, or a subsequent minor subdivision, a copy of each instrument of transfer for the parcel or tract pertaining to the subject parcel filed or recorded since October 1, 2003. The instruments of transfer include but not limited to deed(s), certificate of survey(s) or subdivision plat(s), Section 76-3-609(2), MCA.

2(a)(iii). Review Process

For both minor and major subdivisions, the initial review process is as follows:

A. Element Review

- I. Within five (5) working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all the applicable materials required by Section 2(a)(ii) and shall give written notice to the subdivider of the subdivision administrator's determination.
- II. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall identify those elements in the notification and take no further action until all the missing elements have been submitted.
- III. The subdivider shall submit additional information to correct the deficiencies. The additional materials must be submitted in the form of one paper copy and one electronic copy.
- IV. If the subdivider submits additional information to correct the deficiencies, the subdivision administrator shall have five (5) working days to notify the subdivider whether the application contains all the materials required by Section 2(a)(ii) Subdivision Application and Preliminary Plat Submittal as applicable.
- V. If the applicant does not submit information to correct the deficiencies within one hundred eighty (180) days following the subdivision administrator's letter identifying the missing elements, the application and file will be terminated. The subdivision administrator shall notify the applicant thirty (30) days prior to the application being terminated.
- VI. This process shall be repeated until the subdivider submits an application containing all the materials required by Section 2(a)(ii), or the application is terminated or withdrawn.

B. Sufficiency Review

- I. Within fifteen (15) working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in Subsection (A) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
 1. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and no further action shall be taken on the application by the subdivision administrator until all the materials identified as insufficient are submitted.

2. The subdivider shall submit additional information to address the insufficient items. The additional materials must be submitted in the form of one paper copy and one electronic copy.
3. If the subdivider submits additional information to correct the deficiencies in accordance with Subsection (A)(III) above, the subdivision administrator shall have fifteen (15) working days to notify the subdivider whether the submitted information and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
4. If the applicant does not submit information to correct the deficiencies within one hundred eighty (180) days following the subdivision administrator's letter identifying the insufficient items, the application and file will be terminated. The subdivision administrator shall notify the applicant 30 days prior to the application being terminated.
5. This process shall be repeated until the application contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is terminated or withdrawn.

- II. A determination that an application contains sufficient information for review as provided in this Subsection (B) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
- III. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

C. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

2(a)(iv). Amended Applications

- A. If the subdivider changes the subdivision application or preliminary plat before the public hearing for major subdivisions, or before the governing body makes its decision for first minor subdivisions, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review. Subdividers will schedule a time to submit the amended application or preliminary plat to the subdivision administrator.
 - I. Within five (5) working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in Subsection (C) below.
 - II. The applicable review period is suspended while the subdivision administrator considers the amended application or preliminary plat.
 - III. If the subdivision administrator determines the changes are not material, the applicable review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - IV. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require:
 - 1. the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application with payment of a new application fee, or
 - 2. proceed with the applicable review period upon certification from the subdivision administrator that the application is sufficient for review.
- B. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided above in Subsection (A)(II).
- C. The following changes, although not an exhaustive list, may be considered material:
 - I. configuration or number of lots;
 - II. road layout;
 - III. configuration of park land or open spaces;
 - IV. easement provisions;
 - V. designated access; or

- VI. changes to the proposed use of the lots.
- D. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The subdivider may request a public meeting with the governing body for first minor subdivision, or a public hearing with the governing body for major subdivisions and may submit additional evidence to show that the changes to the preliminary plat are not material.
 - I. The applicable review period is suspended until the governing body decision on the appeal is made.
 - II. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted pursuant to Subsection (A)(IV) above.
 - III. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the applicable review period resumes as of the date of the decision.
 - IV. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the applicable review period provided in Subsection (D)(I).

2(a)(v). Amending Approved Preliminary Plats Before Final Plat Approval

- A. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
 - I. Within five (5) working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to Subsection (B) below.
 - II. If the subdivision administrator determines the changes are material, the subdivision administrator may either require a public hearing with the applicable body for major subdivisions, or a meeting with the governing body for first minor subdivisions, or, if the changes are extensive, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
 - III. If the subdivision administrator determines the changes are not material, the subdivision administrator may accept the changes, notify the subdivider and the governing body of that decision, and the governing body may approve

those changes in a meeting for which notice has been given of non-material changes to the preliminary plat.

- B. The following changes, although not an exhaustive list, may be considered material:
 - I. configuration or number of lots;
 - II. road layout;
 - III. configuration of park land or open spaces;
 - IV. easement provisions;
 - V. designated access;
 - VI. changes to the proposed use of the lots; or
 - VII. changes to conditions of approval.
- C. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within ten (10) working days. The subdivider may request a public meeting with the governing body and may submit additional evidence to show that the changes to the preliminary plat are not material.
- D. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing for major subdivisions, or a public meeting with the governing body for first minors, to determine if the condition may be waived or amended.

2(a)(vi). Extension of Preliminary Plat Approval Period

- A. At the end of the preliminary plat approval period the governing body may grant an extension according to the following:
 - I. The extension request is made by the subdivider in writing at least two (2) weeks prior to the expiration of the preliminary plat.
 - II. All requests for extensions must be in writing and must provide responses to the following criteria and supporting documentation, if any:
 - 3. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.

4. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
5. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
6. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
7. Impacts to public health, safety, and general welfare.
6. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
7. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent.

B. The governing body may issue more than one extension.

2(b). FINAL PLATS

2(b)(i). Final Plat Contents

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats 24.183.1107, ARM (provided in Appendix A).

2(b)(ii). Final Plat Initial Review

A. Final Plat Submittal

A final plat is considered to be received on the date of delivery to the governing body or the agent or agency designated by the governing body when accompanied by the review fee submitted as provided in Section 76-3-602 MCA. The final plat approval application form, which can be obtained from the subdivision administrator, and all supplementary documents must be submitted to the

subdivision administrator at least sixty (60) working days prior to the expiration of preliminary plat approval to accommodate for review time according to Subsection 2(b)(ii)(B) and Section 2(b)(v) of these regulations. The submittal shall include, as applicable:

- I. A complete final plat application and final plat meeting the requirements of the Uniform Standards for Final Subdivisions Plats set forth in Appendix A;
- II. the final plat review fee; and
- III. a written statement and full documentation from the applicant or their representative outlining how each condition of approval has been satisfied.

B. Review by Subdivision Administrator

I. Within twenty (20) working days of receipt of a final plat, the subdivision administrator shall determine whether the final plat contains the information required in Subsection 2(b)(ii)(A) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the subdivision administrator determines that the final plat does not contain the information required under subsections, the subdivision administrator shall identify the final plat's defects in the notification.

1. The subdivision administrator may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under Subsection II-B-2 (b)(i).
2. The time limits, provided in Subsection II-B-2 (b)(i), apply to each submission of the final plat until a written determination is made that the final plat contains the information required under Subsection II-B-2 (a) and the subdivider or the subdivider's agent is notified.
3. Final plat applications will not be considered complete by the subdivision administrator and will not be scheduled with the governing body until materials demonstrating that all conditions of preliminary approval have been satisfied are submitted.

II. If the subdivision administrator determines the final plat differs materially from the approved or conditionally approved preliminary plat, the applicant shall be required to submit the amendments pursuant to Section II-A-5. The subdivider may appeal the subdivision administrator's decision according to the procedures in Subsection II-A-5 (d).

III. The subdivision administrator shall require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these

regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

- IV. The subdivision administrator may forward the application to the public works director and/or county attorney, or county department, requesting their review. Any comments received shall be included in the subdivision administrators report to the governing body.
- V. Time periods for final plat review can be extended by mutual agreement in writing.

2(b)(iii). Subdivision Improvements Agreement: Guaranty

- A. As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements. Section 76-3-507, MCA. The governing body may require up to one hundred percent (100%) completion of improvements related to public health and safety, such as roads, firefighting facilities, and installation of utilities, before agreeing to the use of a subdivision improvements agreement. If one hundred percent (100%) completion is required, engineering plans must be filed before approval of the final plat. A model subdivision improvements agreement and alternative methods of guaranteeing required improvements, the procedures, and requirements for securing an agreement, and suggested conditions for maintenance are available from the subdivision administrator.
- B. Security Guarantee
 - I. If the subdivider chooses to enter into a subdivision improvements agreement, the subdivider shall submit estimated costs prepared by a professional engineer licensed in the State of Montana for completing the required improvements. The amount of the guarantee shall be one hundred twenty-five percent (125%) of the estimated cost.
 - II. The subdivider shall provide a monetary security guarantee for one hundred twenty-five percent (125%) of the required improvements. Acceptable forms of guarantees are:
 - 1. Irrevocable Letter of Credit from a financial institution or other reputable institution subject to the approval of the governing body or designee;
 - 2. A Surety Performance Bond to guarantee the funds to complete improvements, subject to any requirements of the bonding company. The bond shall be payable to the governing body and shall remain in effect until the improvements have been completed and accepted by the governing body; or

3. An Escrow Account where the subdivider has deposited cash, or collateral readily convertible to cash at face value either with the governing body or in escrow with a bank. The subdivider shall give the governing body an agreement with the bank guaranteeing the following:
 - aa. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period; and
 - bb. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

C. Reduction and Release of Guarantee

- I. Upon completion of the required improvements, the subdivider shall submit to the governing body a statement certifying that:
 1. All required improvements are complete.
 2. All required improvements follow the minimum standards specified by the governing body for their construction if the governing body has standards. If standards do not exist, the governing body may require improvements follow design plans prepared by a professional engineer licensed in the State of Montana.
 3. The developer knows of no defects in those improvements
 4. That these improvements are free and clear of any encumbrances or liens
 5. All applicable fees and surcharges have been paid.
- II. In those cases where some improvement guarantees have been made in Subsection 2(b)(iii)(B) above, the amount of the guarantee may be reduced upon installation and acceptance by the governing body of the required improvements. The amount of reduction shall correspond to ninety percent (90%) of the value of the completed improvements. The reduction cannot include the value of improvements that have not been completed.
- III. Upon completion of all the required improvements and certification of the items in Subsection 2(b)(iii)(C) above, the governing body shall authorize the release of any remaining portion of the improvement guarantee.

2(b)(iv). Final Plat Approval

- A. Approval by the Governing Body

The governing body shall examine every final subdivision plat. If a determination is made under Subsection 2(b)(ii)(B) that the final plat contains the information required under Subsection 2(b)(ii)(A), the governing body shall review and approve or deny the final plat within twenty (20) working days.

The governing body shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations or deny it pursuant to Subsection (2) below.

- I. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
- II. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

Time periods for final plat review can be extended by mutual agreement in writing.

B. Inaccurate Information

The governing body may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

2(b)(v). Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in Section 2(b)(vi) below. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation (24-183.1101, ARM), and Final Subdivision Plats (24.183.1107, ARM), contained in Appendix A.

2(b)(vi). Amending Filed Plats

- A. If the subdivider proposes to change the final plat after final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review in a pre-application meeting and pay a new application fee.
- B. Changes that materially alter any portion of a filed plat, its land divisions, or improvements, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots, modifies six or more lots, or abandons or alters an easement, public road right-of-way or access, or parkland dedication must be reviewed by the subdivision administrator and approved by the governing body, and the amended plat shall be filed at the County Clerk & Recorder

Office. The following changes, although not an exhaustive list, may be considered material:

- I. configuration or number of lots;
 - II. road layout;
 - III. configuration of park land or open spaces;
 - IV. easement provisions;
 - V. designated access;
 - VI. changes to the proposed use of the lots; or
 - VII. changes to conditions of approval.
- C. Within five (5) working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to Subsection (B) above.
- D. If the subdivision administrator determines the changes are material, the subdivision administrator may either require a public hearing with the applicable body for major subdivisions, or a meeting with the governing body for first minor subdivisions, or, if the changes are extensive, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting.
- E. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and the governing body of that decision, and the governing body shall approve those changes in a meeting for which notice has been given of non-material changes to the preliminary plat.
- F. A subdivider whose proposed changes to the final plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within ten (10) working days. The subdivider may request a public meeting with the governing body and may submit additional evidence to show that the changes to the preliminary plat are not material.

3. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

3(a). FIRST MINOR SUBDIVISIONS

If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision or has not resulted from a tract of record that has had more than five parcels created from that tract of record under Section 76-3-201 or 76-3-207, MCA since October 1, 2003, then the proposed subdivision is a first minor subdivision.

3(a)(i). First Minor Subdivision Review

The pre-application process and initial review process set forth in Section 2, General Procedures, apply to this section.

3(a)(ii). First Minor Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the subdivision administrator a subdivision application containing the materials identified in Section 2(a)(ii) and in the pre-application meeting.

3(a)(iii). First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions pursuant to Section 76-3-609(2)(d) and (e), MCA:

- A. preparation of an environmental assessment;
- B. public hearing requirements; and
- C. parkland dedication.

3(a)(iv). First Minor Subdivision Review Process

- A. Time Period for Approval, Conditional Approval, or Denial,

Within thirty-five (35) working days of receiving a complete and sufficient application, the governing body shall approve, conditionally approve, or deny the proposed subdivision according to Section 3(a)(viii) of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. Section 76-3-609(2)(a) and (b), MCA.

- B. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the thirty-five (35) working day review period. The governing body will make these comments available to the subdivider and to the public upon request. If, during the review of the application, the Subdivision Administrator contacts a public utility, agency, or other entity that was not included on the

list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response. Section 76-3-504(1)(i) and (1)(q)(iii), MCA.

C. Allowed Actions and Uses on a Subdivision Lot

Any action or land use that is not specifically prohibited in the conditions of subdivision approval required by the County Commission are specifically allowed unless otherwise subject to additional restrictions that may be provided in the County's subdivision and applicable zoning regulations. Section 76-3-501(2), MCA.

D. Enforcement and Interpretation of Conditions of Approval

If the County has historically interpreted and enforced or chosen not to enforce a condition of subdivision approval that has benefited a property owner, the County may not undertake a different interpretation or enforcement action against a similarly situated property owner located within the same subdivision. Section 76-3-501(3), MCA.

E. Specific, Documentable and Defined Purpose or Objective for Conditions of Approval

If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in the review criteria found in 76-3-608(3) MCA and pursuant to Section 3(a)(vii) that form the basis for the conditions of approval.

F. Covenants and Homeowners Association Documents - Review and Approval

Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents (covenants and homeowners association articles of incorporation) of the subdivision or amendments of these documents unless they directly and materially impact a condition of subdivision approval for the subdivision. Section 76-3-604(10), MCA.

G. Fees and Real Property Dedications for Housing

The governing body may not require, as a condition for approval of a subdivision, Section 76-3-514, MCA:

- I. the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or
- II. the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

H. Set Aside or Monetary Contribution for Agricultural Soils

The governing body cannot require a set-aside of land or monetary contribution for the loss of agricultural soils under 76-3-608 MCA.

3(a)(v). Amended Applications Prior to Governing Body Decision

If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to Section 2(a)(iii) but before the governing body decision, the subdivider shall submit the amended application to the subdivision administrator for review according to the procedures in Section 2(a)(iv), Amended Applications.

3(a)(vi). Subdivider's Preference for Mitigation

No later than two (2) working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the subdivision administrator's recommendations, as well as any proposed mitigation measures not already discussed with the subdivision administrator. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation pursuant to Section 76-3-608 (5)(b), MCA, and the mitigation approved by the governing body shall be consistent with the written findings of fact required under 76-3-620, MCA.

3(a)(vii). First Minor Planning Board Recommendation and Governing Body Decision and Documentation

A. Prerequisites to Approval

The planning board consideration of the subdivision is the same process as followed by the governing body. The planning board makes a recommendation to the governing body and the governing body, after doing its own analysis, makes the final decision.

The planning board may not recommend, and the governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision, pursuant to Section 76-3-608(3)(b), MCA:

- II. provides easements for the location and installation of any planned utilities, both on and off site;
- III. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- IV. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section 2(b)(iv) of these regulations;

- V. assures that the requirements of Section 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section 5(o), of these regulations, have been considered and will be accomplished before the final plat is submitted; and
- VI. assures that the requirements of Section 76-3-504 (1)(k) regarding watercourse and irrigation easements as set forth in Section 5(n) have been considered and will be accomplished before the final plat is submitted.
- VI. For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
- VII. For a proposed subdivision that will create one or more parcels containing twenty (20) acres or more, the subdivider shall demonstrate in the preliminary plat application that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This information shall be submitted to the local reviewing authority to complete the sanitation review of parcels that do not fall under the review authority of DEQ. Section 76-3-622, MCA.

B. Consideration – Standards

In approving, conditionally approving, or denying a minor subdivision application, the governing body shall consider Subsection (A) above and whether the proposed subdivision complies with:

- I. these regulations, including but not limited to, the standards set forth in Section 5;
- II. applicable zoning regulations;
- III. other applicable regulations, such as, but not limited to Airport Affect Area Regulations, Military Impact Zone Regulations, Lake and Lakeshore Regulations and Floodplain Regulations;
- IV. the MSPA, including but not limited to the following impacts:
 - 1. impact on agriculture; excluding a consideration of the loss of agricultural soils;
 - 2. impact on agricultural water user facilities;
 - 3. impact on local services;

4. impact on the natural environment;
5. impact on wildlife;
6. wildlife habitat; and
7. impact on public health and safety.
8. Proposed mitigation for the identified impacts.

Refer to the “Definitions” section at the beginning of these regulations for definitions for each of the criteria listed above 1 through 8.

C. Consideration – Evidence

As the basis for its decision to approve, conditionally approve, or deny a proposed minor subdivision the governing body may consider and weigh the following, without limitation, as applicable, Section 76-3-608(1), MCA:

- I. the subdivision application and preliminary plat;
- II. the summary of probable impacts and proposed mitigation;
- III. an officially adopted growth policy;
- IV. the subdivision administrator's staff report and recommendations;
- V. relevant agency and public comments; and
- VI. any additional information authorized by law.

D. Water and Sanitation-Special Rules

- I. For a proposed subdivision that will create one (1) or more parcels containing less than twenty (20) acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
- II. For a proposed subdivision that will create one or more parcels containing twenty (20) acres or more, the subdivider shall demonstrate in the preliminary plat application that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This information shall be submitted to the local reviewing authority to complete the sanitation review of parcels that do not fall under the review authority of DEQ.

- III. The governing body shall collect public comment on water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- IV. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - 1. reviewing authority provided in, Title 76, chapter 4, MCA for subdivisions that will create one or more parcels containing less than 20 acres; or
 - 2. the local reviewing authority for proposed subdivisions that will create one or more parcels containing twenty (20) acres or more and less than one hundred sixty (160) acres.
- E. Documentation of Governing Body Decision
 - I. As the basis for its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact based upon 76-3-620, MCA that discuss and weigh the proposed subdivision's compliance with the above subsections. Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this regulations must be based on the entire record. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.
 - II. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall within thirty (30) working days following the oral decision send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - 1. contain information regarding the appeal process for the denial or imposition of conditions;
 - 2. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the basis of the decision;
 - 3. provide the facts and conclusions that the governing body relied upon in making the decision and reference documents, testimony, or other materials that form the basis of the decision;
 - 4. identifies the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and

5. each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in the review criteria found in 76-3-608(3) MCA; and
6. set forth the time limit for approval, pursuant to Subsection (F) below.

F. Subdivision Application and Preliminary Plat Approval Period

- I. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years. Section 76-3-610, MCA.
 1. At least thirty (30) days prior to the expiration of the preliminary plat approval, the governing body may, at the request of the subdivider, extend the approval for a mutually agreed-upon period of time. Any mutual agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension.
 2. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section 2(b)(iv).
- II. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires. Section 76-3-610(2), MCA.
- III. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

3(a)(viii). First Minor Subdivision Final Plat

The final plat must include the contents and be submitted and reviewed in accordance with the appropriate requirements contained in Section 2(b), Final Plats.

3(b). SUBSEQUENT MINOR SUBDIVISIONS

In accordance with Section 76-3-609 (4) MCA, the governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision. These regulations require

subsequent minor subdivisions to be processed according to Section 3(a)(i) through 3(a)(viii), only if the preliminary plat application meets the following criteria:

- A. It is the second, or subsequent, minor subdivision on a tract of record as it existed on October 1, 2003; and/or
- B. It would not result in a total of more than five parcels created from subdivision and any combination of exemption under Section 76-3-201 or 76-3-207, MCA, on a tract of record since October 1, 2003.

If a proposed subdivision is not a first minor subdivision and does not meet all the criteria listed above, it is not a subsequent minor subdivision and shall be processed according to Section 4, Review and Approval Procedures for Major Subdivisions.

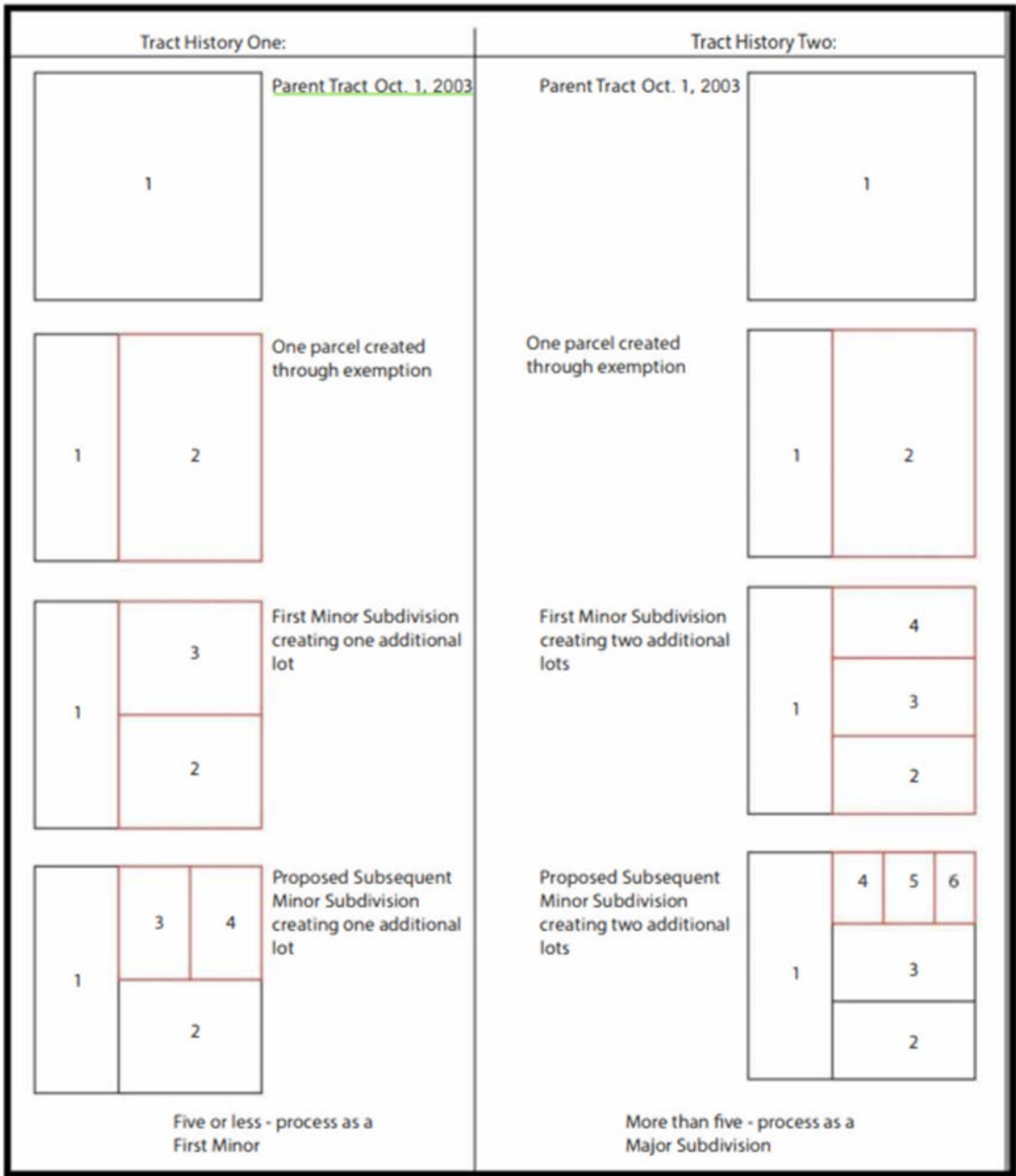


Figure 1 – How to count tract history to determine how to process subsequent minor subdivisions.

3(c). ADMINISTRATIVE MINOR SUBDIVISIONS

3(c)(i). Criteria to Be Met

First and subsequent minor subdivisions must be reviewed using the administrative process provided for in 3(c)(ii) if the proposed subdivision:

- A. is located in an area that is subject to and complies with zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3, that, at a minimum, address development intensity through densities, bulk and dimensional requirements, and use standards;
- B. has a will-serve letter from a municipal water and sewer service or by a county water and/or sewer district created under 7-13-2203 that supplies both water and sewer services;
- C. has existing legal and physical access to each lot; and
- D. does not require a variance to any of the contents of the subdivision regulations required in 76-3-504(1)(g), MCA.

3(c)(ii). Exemptions for Administrative Minor Subdivision

An administrative minor subdivision meeting the requirements of III-C-1 is exempt from:

- A. submitting the summary of probable impacts based on criteria described in 76-3-608(3) and the environmental assessment required in 76-3-603, MCA;
- B. the review criteria described in 76-3-608(3)(a), MCA; and
- C. the requirements of 76-3-209(2) through (5), MCA.

3(c)(iii). Subdivision Administrator Review

For administrative minor subdivisions, the subdivision administrator appointed by the governing body shall:

- A. assume all decision-making authority of the governing body provided in 76-3-608, MCA;
- B. approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement pursuant to 76-3-620, MCA within 30 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in 76-3-604(1) through (3), MCA; and
- C. immediately on a determination that the application meets the requirements of 76-3-604(1) through (3), MCA, notify by first-class mail of the pending application:

- I. each property owner of record whose property is immediately adjoining the land included in the preliminary plat; and
- II. each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

3(c)(iv). Objections to Subdivision Administrator Review

If a party identified in 76-3-625(3), MCA objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application on to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision was arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination.

3(c)(v). Other Requirements

All the requirements of Title 76, chapter 3, except those exempted in 3(c)(ii) and 3(c)(iii), apply to an administrative minor subdivision.

4. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

4(a). REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

The pre-application process and initial review process set forth in Section 2, General Procedures, apply to this section.

A. Allowed Actions and Uses on a Subdivision Lot

Any action or land use that is not specifically prohibited in the conditions of subdivision approval required by the County Commission are specifically allowed unless otherwise subject to additional restrictions that may be provided in the County's subdivision and applicable zoning regulations.

B. Enforcement and Interpretation of Conditions of Approval

If the County has historically interpreted and enforced or chosen not to enforce a condition of subdivision approval that has benefited a property owner, the County may not undertake a different interpretation or enforcement action against a similarly situated property owner located within the same subdivision.

C. Specific, Documentable and Defined Purpose or Objective for Conditions of Approval

If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in the review criteria found in 76-3-608(3) MCA and pursuant to Section 4- that form the basis for the conditions.

D. Covenants and Homeowners Association Documents Review and Approval

Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents (covenants and homeowners association articles of incorporation) of the subdivision or amendments of these documents unless they directly and materially impact a condition of subdivision approval for the subdivision.

E. Fees and Real Property Dedications for Housing

The governing body may not require any of the following as conditions of approval to address housing issues:

- I. the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

- II. the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

F. Set Aside or Monetary Contribution for Agricultural Soils

A governing body cannot require a set-aside of land or monetary contribution for the loss of agricultural soils.

4(a)(i). Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the governing body or to the agent or agency authorized by the governing body a subdivision application containing the materials identified in Section 2(a)(ii) and in the pre-application meeting.

4(a)(ii). Phased Subdivision and Preliminary Plat Submittals

A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to Section 1 through Section 4 of these regulations for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development.

The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided below in Subsection (c) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

- A. Except as otherwise provided by this Section, the phased development application must be reviewed in conformity with Sections 1 through Section 4 of these regulations. In addition, each phase of the phased development must be reviewed as provided below in Subsection (C).
- B. The governing body may approve phased developments that extend beyond the time limits set forth in these regulations in Subsection 4(a)(ii)(C)(2) but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within twenty (20) years of the date the overall phased development preliminary plat is approved by the governing body.
- C. Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body. The governing body shall hold a public hearing pursuant to Section 1(f) of these regulations within thirty (30) working days after receipt of the written notice from the subdivider.
 - I. After the hearing, the governing body shall determine whether any changed primary criteria impacts, or new information exist that create new

potentially significant adverse impacts for the phase or phases. Notwithstanding the provisions of Section 2(a), the governing body shall issue supplemental written findings of fact within twenty (20) working days of the hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information.

- II. Any additional conditions must be met before final plat approval for each phase and the approval in accordance with Section 2(b) is in force for not more than three (3) calendar years or less than one (1) calendar year within the maximum time frame provided above in Subsection (B).
- D. The governing body may impose a reasonable periodic fee for the review under Subsection (C), above, of the phases in the phased development.
- E. Modifications to an approved phasing development plan prior to final plat approval shall be reviewed according to the procedures in Section 2(a)(v).

4(a)(iii). Time Period for Approval, Conditional Approval, or Denial

A. Governing Body Review

Within sixty (60) working days, or eighty (80) working days for proposals containing fifty (50) or more lots, the governing body shall approve, conditionally approve, or deny the proposed subdivision according to Section 4(a)(viii) of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section 4(a)(vii) of these regulations. The review period of sixty (60) or eighty (80) working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

B. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the sixty (60) or eighty (80) working day review period. The governing body will make these comments available to the subdivider and to the public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

4(a)(iv). Amended Applications Prior to Public Hearing

If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to Section 2(a)(iii) but before the planning board hearing, the subdivider shall submit the amended application

to the subdivision administrator for review according to the procedures in Section 2(a)(iv) Amended Applications.

4(a)(v). Planning Board Hearing and Governing Body Consideration and Decision

The planning board consideration of the subdivision is the same process as followed by the governing body. The planning board makes a recommendation to the governing body and the governing body, after doing its own analysis, makes the final decision.

A. Public Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application. If the governing body holds the public hearing, a regular planning board meeting with public comment on the subdivision application would be held.

B. Prerequisites for Approval

The planning board may not recommend, and the governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision, pursuant to Section 76-3-608(3)(b), MCA:

- I. provides easements for the location and installation of any planned utilities, both on and off site;
- II. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- III. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section 2(b)(iv) of these regulations;
- IV. assures that the requirements of Section 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section 5(o), of these regulations, have been considered and will be accomplished before the final plat is submitted; and
- V. assures that the requirements of Section 76-3-504 (1)(k) regarding watercourse and irrigation easements as set forth in Section 5(n) have been considered and will be accomplished before the final plat is submitted.
- VI. For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a

source of water or a location for a septic system or drain fields will be available when the lots are developed.

VII. For a proposed subdivision that will create one or more parcels containing twenty (20) acres or more, the subdivider shall demonstrate in the preliminary plat application that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This information shall be submitted to the local reviewing authority to complete the sanitation review of parcels that do not fall under the review authority of DEQ. Section 76-3-622, MCA.

VIII. Provides for the appropriate park dedication or cash-in-lieu.

C. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:

- I. these regulations, including but not limited to the standards set forth in Section 5;
- II. applicable zoning regulations;
- III. the MSPA, including but not limited to Section 76-3-608 (3), as delineated in Subsections 4(a)(x)(A) and (B) of these regulations; and
 1. impact on agriculture, excluding a consideration of the loss of agricultural soils;
 2. impact on agricultural water user facilities;
 3. impact on local services;
 4. impact on the natural environment;
 5. impact on wildlife;
 6. wildlife habitat;
 7. impact on public health and safety; and
 8. Proposed mitigation for the identified impacts.
- IV. other applicable regulations, such as, but not limited to Airport Affect Area Regulations, Military Impact Zone Regulations, Lake and Lakeshore Regulations and Floodplain Regulations.

D. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- I. the subdivision application and preliminary plat;
- II. the environmental assessment;
- III. the summary of probable impacts and proposed mitigation;
- IV. an officially adopted growth policy;
- V. information provided at public hearing(s);
- VI. subdivision administrator's staff report and recommendation; and
- VII. any additional information authorized by law.

E. Water and Sanitation Information

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The water and sanitation information required to be submitted is detailed in 76-3-622, MCA. The planning board shall forward all comments regarding water and sanitation to the governing body. Section 76-3-604(7)(a), MCA.

F. Written Recommendation of the Planning Board

Within ten (10) working days after the public hearing, the subdivision administrator shall submit the following, in writing, to the subdivider and the governing body:

- I. recommended findings of fact based on the evidence in Subsection (B) above that discuss and consider the subdivision's compliance with and impact on the items listed in Subsection (C) above of these regulations;
- II. recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat, Section 76-3-608(1), MCA; and
- III. a recommendation for approval or denial of any requested variances. See Section 1(j) and Section 76-3-506, MCA.
- IV. The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The water and sanitation information required to be submitted is detailed in 76-3-622, MCA. The planning board shall

forward all comments regarding water and sanitation to the governing body. Section 76-3-604(7)(a), MCA.

G. Documentation of Governing Body Decision

As the basis for its decision to approve, conditionally approve, or deny the proposed subdivision pursuant to Section 76-3-608(1), MCA, the governing body shall issue written findings of fact based upon 76-3-620, MCA, that discuss and weigh the proposed subdivision's compliance with the above subsections as well as the planning board's recommendation. Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations must be based on the entire record. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful. Section 76-3-608(10), MCA.

The governing body shall collect public comment on water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat. Section 76-3-604(7)(a), MCA.

The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the: Section 73-3-604(7)(b), MCA.

- I. reviewing authority provided in, Title 76, chapter 4, MCA for subdivisions that will create one or more parcels containing less than (twenty) 20 acres; or
- II. the local reviewing authority for proposed subdivisions that will create one or more parcels containing (twenty) 20 acres or more and less than one hundred sixty (160) acres.

When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall within thirty (30) working days following the oral decision send the subdivider a letter, with the appropriate signature, and make the letter available to the public. Section 76-3-620, MCA. The letter shall:

- I. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the basis of the decision;
- II. contain information regarding the appeal process for the denial or imposition of conditions;
- III. provide the facts and conclusions that the governing body relied upon in making the decision and reference documents, testimony, or other materials that form the basis of the decision;

- IV. identifies the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved;
- V. each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in the review criteria found in 76-3-608(3) MCA; and
- VI. set forth the time limit for approval, pursuant to Subsection (H) below.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

H. Subdivision Application and Preliminary Plat Approval Period

- I. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three (3) calendar years. Section 76-3-610, MCA.
 - 1. At least thirty (30) days prior to the expiration of the preliminary plat approval, the governing body may, at the request of the subdivider, extend the approval for a mutually agreed-upon period of time. Any mutual agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension.
 - 2. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section 2(b)(iv).
- II. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires. Section 76-3-610(2), MCA.
- III. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, updated subdivision administrator's staff report and planning board recommendation.

4(a)(vi). Subdivider’s Preference for Mitigation

No later than two (2) working days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board’s recommendations as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider’s expressed preference regarding mitigation. Section 76-3-608 (5)(b), MCA. The mitigation approved by the governing body shall be consistent with the written findings of fact required under 76-3-620, MCA.

4(a)(vii). Amended Applications Following the Public Hearing

If the subdivider changes the subdivision application or preliminary plat following the public hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review pursuant to Section 2(a)(iv), Amended Applications.

4(a)(viii). Governing Body Meeting – Consideration of New Information

If an amended application was not submitted to the subdivision administrator following the public hearing, but new and additional information is presented to the governing body following the planning boards’ public hearing regarding the proposed major subdivision, the governing body shall determine if the new information constitutes the need for a subsequent public hearing. New information is considered to be information or analysis of information not considered by the planning board at the public hearing.

A. The governing body shall determine whether public comments or documents presented for consideration following the public hearing or at the governing body's public meeting constitute either:

- I. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
- II. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth below.

B. If the governing body determines that public comments or documents presented at the meeting constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body

shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision.

C. If the governing body determines that the information presented constitutes the information described in subsection A above, the governing body may:

- I. approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible or the change to the design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or
- II. schedule or direct its agent or agency to schedule a subsequent public hearing pursuant to Section 4(a)(ix) for consideration of only the new information including a substantial change to the design of the subdivision for purposes or considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the governing body will rely on in making its decision on the proposed subdivision.

D. New information or analysis of information is considered to be credible if it is based on one or more of the following:

- I. physical facts or evidence;
- II. supported personal observations;
- III. evidence provided by a person with professional competency in the subject matter; or
- IV. scientific data supported by documentation.

4(a)(ix). Subsequent Public Hearing

A. If directed by the governing body pursuant to Section 4(a)(viii), the planning board shall hold a subsequent public hearing for consideration of new information.

At the subsequent hearing, the planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

B. If a subsequent public hearing is held pursuant to Section 4(a)(vii), it must be held within forty-five (45) days of the governing body's determination to schedule a subsequent hearing.

Notice of the time, date and location of the subsequent hearing shall be posted according to Subsection 1(f)(ii) of these regulations.

C. If a subsequent public hearing is held, the applicable review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The applicable review period resumes on the date of the subsequent public hearing.

4(b). MAJOR FINAL PLATS

The final plat must have the contents and be submitted and reviewed in accordance with the appropriate requirements contained in Section 2(b), Final Plats.

5. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section 1(j), Variances. The governing body may not grant variances from the provisions of Section 5(c), Lands Unsuitable for Subdivision or from the provisions of Section 5(d), Floodplain Provisions. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Sections 6, 7, and 8 and of these regulations for additional information.

5(a). Conformance with Regulations

The design and development of a subdivision must conform with any applicable zoning or other regulations. Where zoning regulations are not in effect establishing maximum densities or minimum lot sizes, maximum density and minimum lot size must be established in consultation with local and state health authorities.

5(b). Natural Environment

The design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and must, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees, and natural vegetation.

5(c). Lands Unsuitable for Subdivision

The governing body may find land to be unsuitable for subdivision because of potential hazards such as flooding, snow avalanches, rock falls, landslides, adverse soil types, steep slopes in excess of twenty-five percent (25%) slope, high potential for wildfire, subsidence, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or other features which may be detrimental to the health, safety, or general welfare of existing or future residents. These lands must not be subdivided unless the hazards are eliminated or will be mitigated by approved design and construction plans.

5(d). Floodplain Provisions

Land located in the floodway of a one hundred (100) year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health, or welfare, or that may be prohibited by state or local floodplain or floodway regulations.

If identified as necessary during the preapplication meeting by the Subdivision Administrator, the subdivider shall complete and submit as part of the preliminary plat application, an engineering study that identifies the Base Flood Elevation (BFE). This detailed evaluation must be performed by a professional engineer licensed in the State of Montana experienced in this field of work.

A copy of the study identifying the BFE shall be submitted with the preliminary plat application to the local subdivision administrator. The governing body shall forward the study to the Floodplain Administrator and the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) for comment. The governing body shall not delay the preliminary plat review process to wait for comments. Any comments received by the governing body shall be forwarded to the subdivider.

The areas at and below the BFE shall be identified on the preliminary plat as flood hazard area. The flood hazard area shall be identified on the final plat as a no build zone.

5(e). Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public and private improvements and other elements of the subdivision application required by the governing body must be prepared by a professional engineer licensed in the State of Montana or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

If subsequent subdivisions will be served by improvements (roads/streets, fire protection water supplies, storm-water drainage facilities, mailbox facilities etc.) that were installed by a previous subdivider, then the subsequent subdivider may be required to reimburse the previous subdivider for a pro-rata share of the cost of the improvement(s) if all the following criteria are met:

- A. The improvements in question meet the applicable standard; and
- B. The improvements do not have to be upgraded.

5(f). Lots

Each lot must contain a satisfactory building site and conform to county health board regulations, applicable zoning regulations, applicable building regulations and these regulations.

- A. No single lot may be divided by a municipal or county boundary line.
- B. No single lot may be divided by a public road, alley, and public rights-of-way.
- C. Each lot must have access to a public or private street or road.
- D. Corner lots must have driveway access to the same street or road as interior lots.
- E. Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.
- F. No lot may have an average depth greater than three times its average width unless the average width is greater than or equal to three hundred (300) feet.
- G. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.

H. Through lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

5(g). Blocks

A. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

I. In incorporated areas, block length must not be more than sixteen hundred (1,600) feet, if practical.

II. In unincorporated areas, block length must not be more than sixteen hundred (1,600) feet, if practical.

B. Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.

C. Rights-of-way / easements for pedestrian walks, not less than ten (10) feet wide, may be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities, or other public health and safety considerations.

5(h). Streets and Roads

Roads located within a subdivision shall meet the appropriate Broadwater County Subdivision Road Standards found in Appendix B of these regulations. Roads accessing, abutting, or serving two or more parcels or dwellings are considered roads.

The arrangement, type, extent, width, grade, and location of all streets shall be assessed in respect to existing and planned streets, topographical conditions, public convenience and safety, and to proposed uses of the land to be served by them.

A. Roadways

The arrangement, type, extent, width, grade, materials, and location of all roadways shall be considered in their relationship to existing and planned streets and roads, to topographical conditions, maintenance considerations, the delivery of emergency services, to public convenience and safety, in their relation to the proposed uses of the land to be served by them, and to impacted lands outside the subdivision.

B. Relation to Subdivided Areas

The developer shall arrange the roadways to provide for the continuation of roadways between adjacent subdivided parcels when such continuation is necessary for the

convenient movement of traffic, effective provision of emergency services, and the efficient provision of utility easements. A condition may be imposed to provide for such continuation of roadways between adjacent subdivided parcels.

C. Relation to Adjoining Lands

Developing subdivisions shall provide access and utility easements to adjoining lands when access to those lands must pass through the subdivision. The developer may be required through a condition of approval to provide legal rights-of-way/easements and the access must be constructed in accordance with these road standards. A county may require the extension of road easements to the edge of a subdivision property to facilitate future subdivision of adjacent lands, if appropriate.

D. Dead-End Roadways

Dead end roads longer than 1,000 feet require an approved turnaround. Refer below to Figure 2 for approved turnaround alternatives. Dead-end roads with an approved turnaround are only permitted on local roads and driveways. All turnarounds must also conform to the design specifications in Table B-1 in Appendix B. Dead end roads longer than 1,500 feet are not permitted.

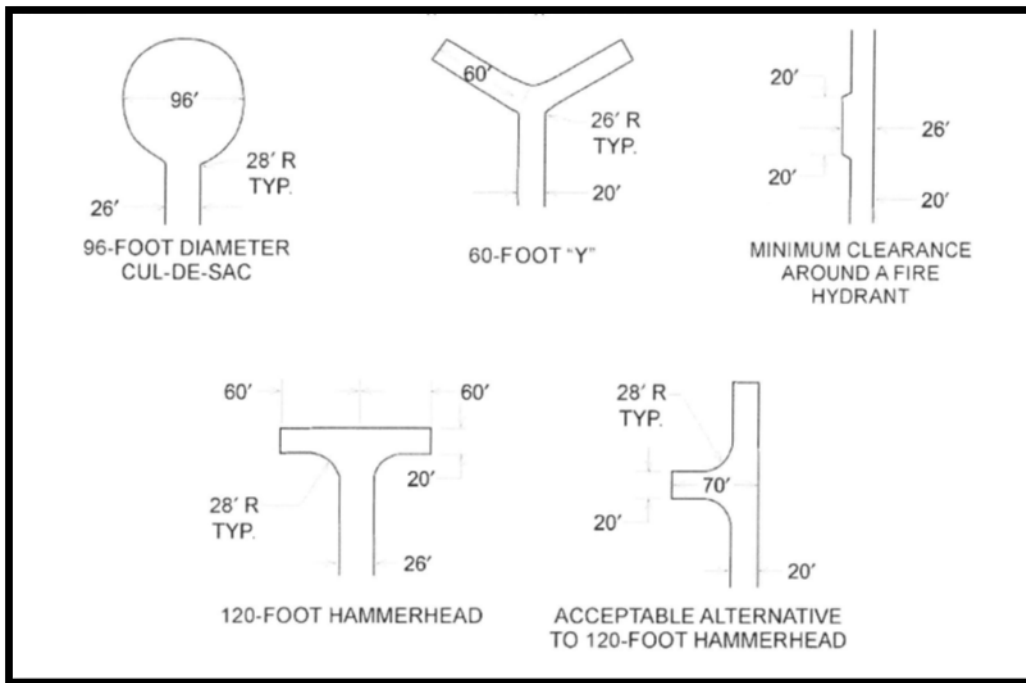


Figure 2. Road Turnaround Alternatives.

E. Half Roadways

Half roadways are prohibited except when it is shown that they are beneficial to the County and that they provide for access by emergency service vehicles.

F. Second Access

For major subdivisions containing commercial and industrial lots, a second primary access road is required. The second access road shall be designed to the road standards identified in Appendix B of these regulations.

For major subdivisions containing residential subdivisions, a second access is required. The second access road shall be designed to the road standards identified in Appendix B of these regulations.

G. Roadway Dedication and Easements

All roads and easements providing access to and within a subdivision will be dedicated for full public use and access.

A road on a final subdivision plat that is dedicated to public use is not a County Road unless the Board of County Commissioners approves by resolution the adoption of the road as a County Road pursuant to Section 7-14-2101, MCA.

H. Roadway Maintenance

All internal subdivision roads will be maintained by the property owners of the lots within the subdivision.

The final plat for the subdivision shall include a statement on the face of the plat that the property owners owning lots within the subdivision are responsible for the maintenance of roads within the subdivision.

I. Drainage Channels and Waterways

- I. Bridges and culverts shall be provided and installed by the developer where drainage channels and waterways intersect any road right-of-way or approach. Bridges and large culverts (48 inches in diameter or more) shall be designed by a professional engineer licensed in the State of Montana.
- II. Bridges must be designed and constructed to meet the current edition of the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance and Factor Design (LRFD) Design Specifications. Permits for construction over waterways, including USACE 404 and state permits, may be required.
- III. Culverts shall be a minimum of 18 inches in diameter and sized on the estimated stormwater flow generated by the subdivision and shall extend across the entire width of the roadway including the side slope toes. Culvert gauge and depth of backfill shall be included in the design.

J. Road Naming, Road Signs and Addressing

All proposed road names for roads within the subdivision will be reviewed and approved by the County Address Coordinator. Road name signs shall be installed at all road intersections providing access to and within the subdivision. Addresses will be assigned to all lots within the subdivision prior to the filing of the final plat by the County Address Coordinator. Road naming, road signs and the addressing of lots in the subdivision will meet the standards found in Appendix C.

K. Adjacent and Off-Site Road Improvements Attributable to the Subdivision

The following is the process that shall be used to determine the adjacent and/or off-site improvements that a subdivider will be responsible for.

I. Maintaining Level of Service

The level of service (LOS), as defined by the current edition of the Transportation Research Board's, *Highway Capacity Manual*, Sixth Edition, of all roads, segments of roads, and/or intersections within the subdivision's traffic impact corridor shall not be lowered because of traffic generated by the subdivision. For the purposes of these regulations, a 'segment of road' is a section of road between one road intersection and the next closest road intersection. A segment of road does not include sections of roads outside the jurisdiction of Broadwater County.

The applicant shall be required to complete all improvements necessary to ensure that the projected LOS at full build out of the subdivision is at or above the existing LOS at the time of submission of a complete and sufficient application.

II. Traffic Impact Corridor

The traffic impact corridor includes:

1. adjacent roads (including intersections) that are impacted by the proposed subdivision;
2. Up to two ingress-egress routes (including intersections) for proposed major and subsequent minor subdivisions, and one ingress-egress route (including intersections) for a proposed first minor subdivision to the nearest state or federal highway/road, Townsend city limits. or to the boundary of Broadwater County and;
3. off-site roads, exclusive of (1) and (2) where projected traffic from the proposed subdivision will account for at least 10 percent of the annual average daily traffic on those roads; and

4. intersections, exclusive of (1) and (2) where projected traffic from the proposed subdivision will account for at least five (5) percent of the traffic volume on any approach leg of the intersection.

III. Payment for Other Costs Directly Attributable to the Subdivision

When any road or segment of road within the traffic impact corridor will not meet or exceed the Broadwater County Road Standards found in these regulations at the time of full build out of the subdivision, the governing body shall require the subdivider to pay or guarantee payment of the costs of improving the road or segment of road so that it meets the standards in these regulations. The subdivider shall be required to pay or guarantee payment of costs that reflect the expected impacts directly attributable to the subdivision, as described below.

If an engineer, licensed in the State of Montana, certifies that a road or segment of road within a subdivision's traffic impact corridor will meet or exceed the applicable Broadwater County Road Standards in these regulations at full build out of the subdivision, the subdivider shall not be required to contribute to the cost of improving that road or segment of road.

IV. Determining Costs Directly Attributable to the Subdivision

A Preliminary Engineering Report (PER) prepared and certified by an engineer licensed in the State of Montana shall provide estimated costs of improvements necessary to make a road or segment of road meet or exceed the Broadwater County Road Standards in these regulations. The PER shall describe the existing and proposed conditions within the traffic impact corridor to the extent necessary so that all components can be quantified and assigned an estimated cost. Estimated costs shall include the following:

1. estimated preliminary and final engineering costs including, but not limited to, design plans and specifications, material testing during construction, inspection and administration;
2. estimated costs of obtaining and completing necessary permits;
3. estimated surveying costs;
4. estimated right-of-way acquisition costs;
5. estimated utility relocation costs;
6. estimated costs for geotechnical and miscellaneous design related site testing and laboratory analysis;
7. estimated costs for road construction/improvements including materials, turning lanes, horizontal alignment and vertical grade

adjustments, construction staking, temporary and permanent erosion control, road subgrade stabilization including geotextiles and subbase, sidewalks, curb and gutter, topsoil salvage and replacement, revegetation, weed management, traffic signals, signal timing changes, temporary traffic control, traffic control, approaches, bridges, guardrails, signage and/or pavement markings, non-motorized facilities, provisions for stormwater drainage, and contingencies to bring the facility into compliance to these regulations; and

8. estimated costs for any other items necessary to improve the road.

Estimated costs shall not be older than six (6) months at the time of final plat application. The burden of proof for estimated costs is the responsibility of the subdivider. Estimated costs must be prepared and certified by an engineer licensed in the State of Montana. The governing body may, at the subdivider’s expense, require a third-party, designated by the governing body, to review estimated costs as described in the PER.

Subdividers who are completing a Minor Subdivision may either work with an engineer to complete the PER or may contact the Broadwater County Road Department to determine if the Road department can provide them with data to assist with this process.

With preliminary approval of the subdivision application, the governing body shall determine a percentage of the costs described above by comparing projected annual average daily traffic (AADT) at full build out of the subdivision with existing AADT, which includes projected AADTs from any preliminary approved and final platted subdivisions within the County. This percentage reflects the expected impacts directly attributable to the subdivision. The percentage of costs shall be calculated for each segment of road(s) impacted using the following formula:

$$\frac{P}{(P + E)} * (100) = I$$

Where:

P = Projected AADT

E = Existing AADT

I = Percentage of Impact (the percentage of impact shall be rounded to the nearest hundredth of a percent, i.e., 36.746% is rounded to 36.75%)

$$\frac{80}{(80+104)} * (100) = 43.48\%$$

Where:

P = 10 lots x 8 aadt = 80

E = 104

I = 43.478% is rounded to the nearest hundredth of a percent

i. Use of Funds.

Upon receipt of the funds related to estimated costs, the County shall place funds in an interest-bearing reserve account, held and used by the County strictly for the upgrade of the impacted roads or segments of road within the subdivision's traffic impact corridor. The County shall cause the completion of the construction or improvement of all impacted roads within the traffic impact corridor in compliance with the Broadwater County Road Standards found in Appendix B of these regulations when sufficient funds become available.

b. Rural Improvement Districts

The subdivider shall establish a new Rural Improvement District (RID) or expand an existing adjacent RID prior to final plat approval to provide funds for ongoing maintenance for all new public improvements associated with the subdivision. These improvements may include, but not be limited to, new roads, bridges, culverts, street signs, sidewalks, pathways, and any other public improvements resulting from the subdivision.

If the subdivider paid for the improvements that the RID is created for under section a above, then those lots will be considered to have already contributed to the RID for the purpose of the improvement but can be asked to contribute to the RID for maintenance of the improvements.

I. Second or Emergency Access

- (i) For major commercial subdivisions, a second primary access road is required. The second primary access road shall be designed to the standards of a local road and serve a second primary access to the subdivision.
- (ii) For major residential subdivisions, a second access is required. The second access may be an emergency access, designed to the standards of a local road except for road width, which may be 18 feet, and easement width, which may be 60 feet. The emergency access shall not function now or in the future as a primary access unless it is upgraded to a full local road standard. Emergency access roads must provide legal access in emergency situations to the subdivision.

II. Roadway Dedication and Easements

- (i) All roads and easements providing access to and within a subdivision will be dedicated for public use and access.
- (ii) A road on a final subdivision plat that is dedicated to public use is not considered a County Road until the Board of County Commissioners approves by resolution the adoption of the road as a County Road per 7-14-2101, MCA.

(iii) Subdivision Roads

- I. All roadways within a proposed subdivision and providing primary access or providing primary access through neighboring lands in unincorporated areas shall have dedicated easements providing access to the public or to dedicated easements providing public access for the use of the subdivision. The type of easement is subject to the discretion of the governing body. Such easements provide for legal access while the property remains under private ownership. Subdivision roadways constitute an acceptable roadway easement when all the following conditions are met:
1. the easement is accepted by the governing body as a public access easement;
 2. the easement is recorded in the Office of the Clerk and Recorder;
 3. the easement clearly grants to the public, or to the subdivision, an unrestricted right of ingress and egress from a public roadway to the parcels within the subdivision;
 4. a signed statement from a professional engineer licensed in the State of Montana documenting roads are built according to engineering plans and county standards; and
 5. a Property Owners' Association or a Road Users Agreement for the maintenance of the roadway meeting the requirements below of Subsection V-H (a)(viii)(B) is provided to the governing body.

III. Roadway Maintenance

- (i) Internal subdivision roads with easements dedicated to public access or easements dedicated to the subdivision will be maintained by the owners of the lots within the subdivision. The applicant shall establish a Property Owners' Association or a Road Users Agreement which provides for the maintenance of the internal subdivision road network. Maintenance shall include dust suppression, snow removal, surface maintenance (e.g., gravel upkeep, paved surface repair and replacement over time); and maintenance of drainage ditches and drainage facilities (e.g., catch basins) along the road. The agreements shall be filed with the final plat.

IV. Drainage Channels and Waterways

- (i) Bridges and culverts shall be provided and installed by the developer where drainage channels and waterways intersect any road right-of-way or approach. Bridges and culverts shall be appropriately sized in accordance with the drainage area. Bridges and culverts shall be designed by a professional engineer licensed in the State of Montana.

- (ii) Bridges must be designed and constructed to meet the current edition of the American Association of State Highway and Transportation Officials (AASHTO) Load Resistance and Factor Design (LRFD) Design Specifications and the AASHTO Policy on Geometric Design of Highways and Streets. Permits for construction over waterways, including USACE 404 and state permits, may be required.
- (iii) Culvert diameter shall be determined using Table 1 of Appendix B of these regulations and the culvert shall extend across the entire width of the roadway including the side slope toes. Culvert gauge and depth of backfill shall be included in the design.

V. Intersections

The following requirements shall apply to roadway intersections:

- (i) The intersection of more than two roads at one point shall be avoided.
- (ii) Roads shall be laid out to intersect as nearly as possible at right angles. No road shall intersect any other road at less than a 75-degree angle.
- (iii) Two roads meeting a third road from opposite sides shall meet at the same point or their centerlines should be offset by a minimum of 200 feet.
- (iv) Intersection design shall conform to the specifications provided in Table B-1 of Appendix B of these regulations.
- (v) Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual roadways.
- (vi) Hilltop intersections are prohibited, except where no alternatives exist. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited.
- (vii) Approaches to intersecting roads must not exceed a maximum landing of three percent.

VI. Road Names and Signs

All road names shall be reviewed and approved of by the County Planner. All road name signs and traffic control signs shall be installed by the subdivider. Signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices (MUTCD). The installation of traffic signs shall be certified as meeting the MUTCD by a professional engineer licensed in the State of Montana.

VII. Rural Addressing in Unincorporated Areas

To provide for timely response by emergency service providers, each lot shall be assigned an address and all addresses will be assigned by the County Planner.

c. Traffic Study

i. Vehicle Trip Calculation

- (i) The average daily trips (ADT) generated by a residential subdivision shall be calculated based on eight trips per household per day, or as identified in a traffic study completed by a qualified professional engineer licensed in the State of Montana.
- (ii) ADT for commercial/industrial developments must be calculated according to the most current version of Institute of Traffic Engineer's (ITE) Trip Generation Manual, or by a traffic study completed by a qualified professional engineer licensed in the State of Montana.

VIII. Traffic Studies Required

- (i) A traffic study completed by a professional engineer licensed in the State of Montana is required for the following subdivisions:
 - I. For all commercial and industrial subdivisions.
 - II. For all subdivisions, whose primary access is on a major or minor collector in the jurisdiction of the governing body that will generate more than 750 ADT.
 - III. For all subdivisions, whose primary access is on a local road in the jurisdiction of the governing body that will generate more than 400 ADT.
 - IV. When a traffic study is required by the Montana Department of Transportation (MDT) for any access or approach onto an MDT roadway.

d. Improvements

- IX. All roadway improvements including pavement, curbs, gutters, sidewalks, utilities, and drainage must be constructed in accordance with the standards prescribed in these regulations.
- X. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials.
- XI. Streets and roads must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.
- XII. In unincorporated areas where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain

property easements in compliance with these design and improvement standards, from each property owner or the appropriate administrator of public lands. Each easement must allow construction and perpetual maintenance of a road accessing the property and allow vehicular travel on the road. The easement shall either be dedicated to the public, or the subdivision at the discretion of the governing body.

- (i) Adequate and appropriate easements must be granted by each property owner through a signed and notarized document that grants the easement in conformance with the design.
- (ii) The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

XIII. Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body. Borrow areas for roads must be seeded with approved plant materials to reduce erosion.

XIV. Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the public improvement's agreement.

XV. Approach/Encroachment Permits: All approaches onto public roads shall be built according to the approved encroachment permits according to the following:

- (i) Approach/Encroachment permits for individual lots accessing a privately built and maintained internal subdivision road are not required.
- (ii) Individual lots proposing a direct approach onto a county road must meet the following requirements:

I. Single family residential lots with a direct approach to a county road must submit a Planning Encroachment Form signed by the Public Works Department with the preliminary plat. The requirements stated in that form must be met prior to final plat.

II. All other lots proposing a direct approach onto a county road shall receive an approved encroachment permit and the approach must be built according to the requirements of the permit prior to final plat.

(iii) Approach/Encroachment permits are required for all internal subdivision roads accessing a county road. The approach must be built according to the permit at the time of final plat.

(iv) Approach/Encroachments onto MDT roads and highways must be permitted and built according to MDT requirements prior to final plat.

(v) Approach/Encroachment permits are required for any access onto a municipal road. The approach must be built according to the permit at the time of final plat.

f. Definitions and Classification Standards

XVI. Arterials

That part of the roadway system serving as the principal network for through traffic flow. The routes connect areas of principal traffic generation and important rural highways entering the City of Townsend. Typically, a subdivision proposal does not require an arterial roadway. Therefore, no County specific standards are included herein. If an arterial roadway standard is needed, the Montana Department of Transportation (MDT) standards for the appropriate roadway shall be used.

XVII. Major Collectors

Major collectors are designed to serve both traffic movement and access. The roads typically are paved and have crossroad access but limited private driveway access and medium to high speeds. Within incorporated areas, no distinction is made between major and minor collectors. In unincorporated areas, the distinction is made mostly from the standpoint of placing greater priority on those designated as major collectors. State Secondary Highways in Broadwater County are designated as major collectors.

XVIII. Minor Collectors

Minor collectors are similar to major collectors except they may carry a greater level of localized traffic, and their condition may not be as high a priority as major collectors. The roads typically have limitations to road or driveway access and medium speeds similar to those on major collectors.

XIX. Local Roads

Local roads are streets with the lowest traffic volumes. They are designed to offer access to farms and residences, connecting driveways to collectors or arterials. Most of the roads in the County are classified as local roads and exist sporadically throughout Broadwater County.

ii Postal Service

Mail delivery to a subdivision must comply with the requirements of the United States Postal Service.

iii Stormwater Drainage Facilities

- a. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required by Section II-A-2 is subject to approval by the Planning Department or Road Department Superintendent.
- c. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- e. Each culvert or other drainage facility must be large enough to accommodate potential run-off from upstream drainage areas for the 10-year, 24-hour storm event.
- f. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be in street rights-of-way or in perpetual easements of appropriate widths.
- g. Drainage systems must not discharge into any sanitary sewer facility.
- h. Drainage systems must be designed and certified - by a professional engineer licensed in the State of Montana.
- i. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

iv Water Supply Systems

I. General

- I. All water systems may be subject to approval by the governing body.
- II. Water systems required by the governing body shall meet the minimum requirements of the local reviewing authority, the Montana Department of Environmental Quality and the Montana Department of Natural Resources and Conservation. Subdivisions containing lots less than 20 acres in size must be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ prior to approval of the final plat.

III. For subdivisions creating one or more parcels containing 20 acres or more, the subdivider shall submit the required information only to the local reviewing authority and the subdivision administrator. DEQ review and approval is not required. This demonstration to the local reviewing authority is to evaluate the ability to develop lots and is no guarantee that a source of water will be available when the lots are developed.

II. Type of System

I. Any system with more than two connections must be designed by a professional engineer licensed in the State of Montana and reviewed by DEQ.

II. The governing body may require that any proposed central system provide adequate and accessible water for fire protection.

III. Where the subdivision is within the service area municipal system, or a public water supply system, the subdivider must install complete water system facilities in accordance with the requirements of the jurisdiction involved and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the jurisdiction involved and to the DEQ and must obtain their approvals prior to undertaking any construction.

v **Wastewater Treatment Systems**

I. All wastewater treatment systems may be subject to the approval of the governing body.

II. Systems for subdivision lots less than 20 acres in size must meet the minimum standards of the local reviewing authority, and DEQ which are incorporated into and made a part of these regulations by this reference, prior to final plat approval.

III. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate to the local reviewing authority adequate evidence that a sewage disposal facility is sufficient in terms of capacity. In addition, the subdivider shall demonstrate that there is at least one area for a septic system and a replacement drain field for each lot. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a location for a septic system or drain fields will be available when the lots are developed.

IV. Where the subdivision is within the service area of a municipal or public sanitary sewer system, the subdivider must install complete sanitary sewer system facilities in accordance with the requirements of the jurisdiction involved and the DEQ. The subdivider must submit plans and specifications for the proposed

facilities to the jurisdiction involved and to the DEQ and must obtain their approvals prior to undertaking any construction.

vi Utilities

- I. The subdivider must provide adequate and appropriate easements for the construction of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- II. Utility facilities must be designed by utility firms in cooperation with the subdivider, subject, however, to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. Utility easements must be located along the side, and rear lot lines wherever necessary.
- III. Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body.
- IV. In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

vii Water Course and Irrigation Easements

- I. The subdivider shall establish within the subdivision ditch easements that:
 - I. are in locations of appropriate characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - II. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - III. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

- II. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the County Clerk and Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

viii Disposition of Water Rights

If a subdivision will create lots averaging less than five acres and has surface water rights in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- I. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- II. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner’s water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- III. reserved and severed all surface water rights from the land proposed for subdivision.

ix Park Land Dedication – Cash in Lieu – Waivers – Administration

- I. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - I. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - II. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;

III. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and

IV. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

II. A park dedication is not required for:

I. First minor subdivisions in unincorporated areas;

II. subdivision lots larger than five acres;

III. nonresidential subdivision lots;

IV. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

V. subdivisions which will create only one additional parcel.

III. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

IV. The governing body will waive the park dedication requirement if it determines that:

I. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under Subsection V-P (a);

II. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under Subsection V-P (a) above;

- III. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of Subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under Subsection V-P (a); or

the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under Subsection V-P (a).

- V. The local governing body may waive the park dedication requirement if:

- I. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
- II. The area of land to be subject to long-term protection, as provided in Subsection (e)(i), equals, or exceeds the area of dedication required under Subsection V-P (a).

- VI. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under Subsection V-P (a) to a school district, adequate to be used for school facilities or buildings.

- VII. The governing body will administer funds dedicated to the public under this section in accordance with Section 76-3-621, MCA.

- VIII. For the purposes of this park dedication requirement:

- I. “cash donation” means the fair market value of the unsubdivided, unimproved land; and
- II. “dwelling unit” means a residential structure in which a person or persons reside.

x Fire Protection

A fire plan will be created with the Fire Protection Authority (FPA) with jurisdiction for the area in which the Subdivision is located. The applicant will work with the FPA on that fire protection

plan, and the fire plan will take into account that there is a water supply with sufficient volume for effective fire control.

xi Noxious Weeds

All proposed subdivisions shall provide a Weed Management Plan approved by the Broadwater County Weed Board prior to the subdivision application being considered finalized by the Broadwater County Planning Department and Broadwater Commissioners. The Broadwater County Weed Coordinator is the local department providing guidance on the Noxious Weed Management Plan to the proposed subdivision.

